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and KINDER MORGAN G.P., INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 COACHELLA SELF STORAGE,
14 LLC; JAMES PILCHER; SUSAN
PILCHER; MARTIN WELLS and
15 SUSAN WELLS as trustees of the
MARTIN & SUSAN WELLS
16 REVOCABLE TRUST; and
CHARLES SERRANO and
17 BARBARA SLOAN as trustees of the
CHARLES SERRANO AND
18 BARBARA SLOAN 2012
REVOCABLE TRUST, on behalf of
19 themselves and all others similarly
situated,

20 Plaintiffs,

21 v.

22 UNION PACIFIC RAILROAD
COMPANY, successor to SOUTHERN
23 PACIFIC TRANSPORTATION
COMPANY; SFPP, L.P., previously
24 known as SANTA FE PACIFIC
PIPELINES, INC., previously known
25 as SOUTHERN PACIFIC PIPELINES,
INC.; KINDER MORGAN
26 OPERATING L.P. "D"; and KINDER
MORGAN G.P., INC.,
27

28 Defendants.

Case No. 8:15-CV-00718-JVS-DFM

**KINDER MORGAN'S NOTICE OF
MOTION AND MOTION TO DISMISS
AND MOTION TO STRIKE**

ORAL ARGUMENT REQUESTED

Judge: Hon. James V. Selna
Date: September 14, 2015
Time: 1:30 p.m.
Courtroom: 10C – Santa Ana

Complaint Filed: May 5, 2015
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 14, 2015 at 1:30 p.m., or as soon thereafter as this matter may be heard, in Courtroom 10C – Santa Ana of the United States District Court for the Central District of California, located at the Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701-4516, Defendants SFPP, L.P., Kinder Morgan Operating L.P. “D,” and Kinder Morgan G.P., Inc. (collectively, “Kinder Morgan”) will and hereby do move this Court for an order dismissing Plaintiffs’ Second Amended Complaint (“SAC”), pursuant to Federal Rule of Civil Procedure 12(b)(6).

In addition, Kinder Morgan moves to dismiss or strike Plaintiffs’ request for “restitution damages for the benefits and profits that were unfairly or unlawfully obtained by Defendants” and “reasonable attorneys’ fees, in an amount to be proved at trial,” in Plaintiffs’ Fifth Cause of Action for Violation of California Business and Professions Code section 17200 (“Section 17200”), pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(f).

Kinder Morgan brings this motion on the grounds that each of Plaintiffs’ claims fails as a matter of law because Plaintiffs failed to adequately plead an ownership interest in the subsurface of Union Pacific Railroad Company’s right-of-way where Kinder Morgan’s pipeline is located. This is the fundamental premise underlying all of Plaintiffs’ claims. Additionally, Plaintiffs’ Fourth Cause of Action for “Quiet Title / Slander of Title / Ejectment” should be dismissed because it is impermissibly uncertain, and does not adequately allege the elements for quiet title, slander of title, or ejectment. Further, the SAC is not verified, as is required for a quiet title claim. Finally, Plaintiffs’ Section 17200 claim fails because it seeks attorney’s fees, “damages,” and nonrestitutionary disgorgement, which are not available as a matter of law.

1 This motion is based on this notice, the accompanying memorandum, the
2 accompanying declaration of Summer J. Wynn and exhibits thereto, the
3 accompanying request for judicial notice, the papers and pleadings on file in this
4 matter, and on such other and further matters or arguments that may be presented at
5 or before the hearing on this motion.

6 This motion is made following the conference of counsel pursuant to
7 L.R. 7-3, which took place on July 10, 2015.

8 Dated: July 17, 2015

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11
12 /s/ Steven M. Strauss

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MORGAN G.P., INC.

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